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GARBARINI FITZGERALD P.C.

420 Lexington Avenue
Suite 2743
New York, New York 10170
Phone: 212.300.5358
Fax: 888.265.7054
www.garbarinilaw.com

November 14, 2013

VIA ECF

Hon. P. Kevin Castel
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Elias Matos, et al. v. Moregrace LLC, et al.*, 13-cv-6652 (PKC)
Joint Letter

Your Honor:

All parties of record submit this joint letter in anticipation of the parties' initial pretrial conference scheduled for November 21, 2013 at 10:45 a.m.

1. Brief description of the case, including the factual and legal bases for the claims and defenses

Plaintiff's Description of Claims

Plaintiff Elias Matos, individually and on behalf of all other similarly situated employees, brings this action against Defendants Moregrace LLC d/b/a Papa John's and its sole decision maker and owner Sultan Ali for all service charges, unpaid minimum and over-time wages, tools-of-the-trade expenses, and spread-of-hours compensation pursuant to the Fair Labor Standard Act and New York Labor Law.

Defendants own and operate two Papa John's quick service restaurants located in the City and County of New York. Plaintiff was employed by Defendants as a delivery-person. During his employment, and that of all delivery workers at Defendants' restaurants, Plaintiff was paid less than minimum wage, no over-time or spread-of-hours pay and was forced to work off-the-clock. Plaintiff also purchased his own tools-of-the-trade and had gratuities improperly retained by the Defendants. Defendants also improperly applied a tip-credit for all Plaintiff's hours even though the majority of Plaintiff's duties were not those which the Plaintiff received tips, e.g., cooking, mopping, cleaning.

All of the facts applicable to Plaintiff apply to all similarly situated employees of Defendants. Plaintiff and all other similarly situated employees are owed unpaid minimum and over-time wages, spread-of-hours pay, all service charges, uniform expenses and tools-of-the-trade expenses. These practices by Defendants were done willfully and intentionally.

Defendants' Description of Claims

Defendants categorically deny the Plaintiff's allegation and assert that the Plaintiff may not maintain a collective or class action. All actions by the Defendants were in good faith and conformed to all applicable Federal and State law.

2. Any contemplated motions

Plaintiff proposes to move as soon as the Court will allow:

- 1 - for conditional certification for discovery purposes;
- 2 - FLSA notice of lawsuit be sent to all covered employees; and,
- 3 – summary judgment at the end of discovery.

Defendants

Will move for summary judgment on one or all issues at the close of discovery.

3. Prospect for settlement

The parties have exchanged an offer and demand, and will continue to discuss an early resolution to this matter.

GARBARINI FITZGERALD P.C.

By: 
Richard M. Garbarini

cc: David Feldman (attorney for Defendants)(by ECF)